

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JEB DUGGAR, BY FATHER AND
NEXT FRIEND, STEVE DUGGAR, and
STEVE DUGGAR, INDIVIDUALLY

PLAINTIFFS

v.

Civil Action No. 1:95cv319-D-D

U.S. OFFICE OF PERSONNEL MANAGEMENT,
U.S. DEPARTMENT OF INTERIOR,
GOVERNMENT EMPLOYEES HOSPITAL
ASSOCIATION (GEHA), and
BLUE CROSS & BLUE SHIELD OF
MISSISSIPPI, A MUTUAL INSURANCE COMPANY

DEFENDANTS

MEMORANDUM OPINION

Presently before the court are the defendants' motions for summary judgment. Finding them well-taken, this court shall grant them and dismiss all of the plaintiffs' claims.

. Factual and Procedural Background

The plaintiff Steve Duggar married Lynda C. Duggar in April 1991. The plaintiff Jeb Duggar is Steve's son by a previous marriage. In January 1992, Jeb lived with Steve and Lynda at 112 Michael Street in New Albany, Mississippi. At that time, Lynda was an employee of the National Park Service, a division of the United States Department of the Interior. She was also enrolled in the Federal Employees Health Benefits Program. The health insurance policy she chose under the Program covered Lynda, Steve and Jeb.

In May 1992, Steve and Lynda separated. In March 1993, they divorced. Upon separation, Steve and Jeb moved out of the house at 112 Michael Street. From October 16, 1992, to February 3, 1993, Jeb was hospitalized or received medical treatment in both Mississippi and Arkansas. During this interval, Steve and Lynda remained separated, and Steve and Jeb did not live with Lynda. After incurring medical expenses related to Jeb's treatment, Steve and Jeb submitted claims for the expenses with the Government Employers Hospital Association (hereinafter "GEHA"), the federal program managing Lynda's health insurance plan. GEHA denied those claims.

On October 12, 1995, Steve and Jeb (hereinafter “the plaintiffs”) filed the present action against GEHA, the United States Office of Personnel Management, the United States Department of the Interior, and Blue Cross and Blue Shield of Mississippi, a Mutual Insurance Company (collectively hereinafter “the defendants”).¹ Seeking declaratory relief and damages, the plaintiffs claim that the defendants wrongfully denied health insurance benefits for Jeb’s medical expenses. Now the defendants move for summary judgment.² They argue that the federal regulations governing Lynda’s health insurance policy clearly provide that Jeb’s medical expenses are not covered because Jeb did not live with Lynda when the expenses were incurred.

II. Standard of Review

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden rests upon the party seeking summary judgment to show to the district court that an absence of evidence exists in the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986); see Jackson v. Widnall, 99 F.3d 710, 713 (5th Cir. 1996); Hirras v. Nat'l R.R. Passenger Corp., 95 F.3d 396, 399 (5th Cir. 1996). Once such a showing is presented by the moving party, the burden shifts to the non-moving party to demonstrate, by specific facts, that a genuine issue of material fact exists. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986); Texas Manufactured Housing Ass'n, Inc. v. City of Nederland, 101 F.3d 1095, 1099 (5th Cir. 1996); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). Substantive law will determine what is considered material. Anderson, 477 U.S. at

¹In the original complaint, the defendants were “the U.S. Office of Personnel Management, the U.S. Department of Interior, and the Government Employees Hospital Association.” Blue Cross and Blue Shield of Mississippi, a Mutual Insurance Company, was joined subsequent to the original complaint.

²Each defendant filed a separate motion for summary judgment. However, each motion incorporates the arguments of the prior motions, so this court shall consider them together.

248; see Nichols v. Loral Vought Sys. Corp., 81 F.3d 38, 40 (5th Cir. 1996). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248; see City of Nederland, 101 F.3d at 1099; Gibson v. Rich, 44 F.3d 274, 277 (5th Cir. 1995). Further, "[w]here the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Anderson, 477 U.S. at 248; see City of Nederland, 101 F.3d at 1099. Finally, all facts are considered in favor of the non-moving party, including all reasonable inferences therefrom. See Anderson, 477 U.S. at 254; Banc One Capital Partners Corp. v. Kneipper, 67 F.3d 1187, 1198 (5th Cir. 1995); Taylor v. Gregg, 36 F.3d 453, 455 (5th Cir. 1994); Matagorda County v. Russell Law, 19 F.3d 215, 217 (5th Cir.1994). However, this is so only when there is "an actual controversy, that is, when both parties have submitted evidence of contradictory facts." Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir.1994); Guillory v. Domtar Industries Inc., 95 F.3d 1320, 1326 (5th Cir. 1996); Richter v. Merchants Fast Motor Lines, Inc., 83 F.3d 96, 97 (5th Cir. 1996). In the absence of proof, the court does not "assume that the nonmoving party could or would prove the necessary facts." Little, 37 F.3d at 1075 (emphasis omitted); see Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990).

III. Discussion

The legislation governing this action is the Federal Employees Health Benefits Act (hereinafter "FEHBA"). See 5 U.S.C. §§ 8901 *et seq.* The FEHBA "established a comprehensive program to provide federal employees and retirees with subsidized health care benefits." Hayes v. Prudential Ins. Co., 819 F.2d 921, 922 (9th Cir. 1987), cert. denied, 484 U.S. 1060, 108 S. Ct. 1014, 98 L. Ed.2d 980 (1988). Under the FEHBA, the United States Office of Personnel Management is authorized to administer the federal employee health benefits program by contracting with qualified carriers offering various health care plans. 5 U.S.C. §§ 8902-03. The Office of Personnel Management is also authorized to promulgate regulations necessary for

the effective management of the program. 5 U.S.C. § 8913; see 5 C.F.R. §§ 890.101 - 890.1210.

Regarding the action at bar, the FEHBA provides that “[t]he regulations of the [Office of Personnel Management] shall provide for the beginning and ending dates of coverage of employees, annuitants, members of their families, and former spouses under health benefits plans.” 5 U.S.C. § 8913(c). The FEHBA defines a “member of family” as *inter alia* “an unmarried dependent child under 22 years of age, including . . . a stepchild . . . [who] lives with the employee or annuitant in a regular parent-child relationship” 5 U.S.C. § 8901(5). Echoing this definition, the regulations provide that “[a] child is considered to be dependent on an enrolled employee . . . if he or she is . . . [a] stepchild . . . who lives with the enrollee in a regular parent-child relationship.” 5 C.F.R. § 890.302(b)(1)(iii). Regarding the ending date of coverage, the regulations provide as follows:

The coverage of a family member of an enrollee terminates, subject to the temporary extension of coverage for conversion, at midnight of the earlier of the following dates:

(1) *The day on which he or she ceases to be a family member*

5 C.F.R. § 890.304(c)(1) (emphasis added); see also 5 C.F.R. §§ 890.401 and 890.1101 *et seq.* (regarding extension of coverage).

Here, the parties do not dispute the material facts. Steve and Lynda separated in May of 1992. Upon their separation, Steve and Jeb moved out of Lynda’s home at 112 Michael Street. Therefore, after the separation, Jeb no longer lived with Lynda. To qualify as a member of family under the FEHBA, a stepchild must live with the federal employee enrolled in the FEHBA’s benefits program. See 5 U.S.C. § 8901(5). Here, Lynda was the enrollee. Since Jeb did not live with Lynda after the separation, he was no longer a “member of family” after the separation. Therefore, subject to any extension of coverage, Jeb’s coverage under the FEHBA terminated at midnight of the date Steve and Lynda separated in May 1992.³ See 5 C.F.R. §

³In their original complaint, the plaintiffs asserted that “Jeb Duggar was not given notification of loss of coverage, by any party.” Complaint ¶ 6. However, the plaintiffs have since failed to point this court to any authority requiring any party to so notify the Duggars, and this court has found no such authority. This court agrees with the defendants that “the Plaintiffs are not entitled

890.304(c)(1). On October 16, 1992, Jeb began incurring medical expenses. His coverage had not been extended until October 1992. Therefore, when Jeb began incurring medical expenses, he was not covered. Furthermore, Jeb remained uncovered throughout the duration of his treatment.

In an attempt to defeat the clear operation of the statutes and regulations cited above, the plaintiffs argue that

[a] material issue of fact exists as to whether FPM 890-1, issued by the Office of Personnel Management in July 1987, and which was provided to plaintiffs by the personnel office of the Natchez Trace Parkway (Department of the Interior) as the plan summary document, is the “plan summary” document, upon which plaintiffs were entitled to rely.

Plaintiffs’ Response to Motion for Summary Judgment (Sept. 4, 1996) ¶ 1. “FPM 890-1” is a supplement to the Federal Personnel Manual, a publication of the Office of Personnel Management which was in effect at the time relevant to this action. In making their argument regarding the supplement, the plaintiffs cite case law providing that the summary of a plan insurance is an enforceable statement of benefits where the summary contradicts the benefits listed in the plan itself. Plaintiffs’ Brief in Opposition to Motion for Summary Judgment (Sept. 4, 1996), unnumbered pp. 3-4 (citing Berry v. Blue Cross of Washington and Alaska, 815 F. Supp. 359, 364 (W.D. Wash. 1993)). To rule in accordance with the plaintiffs’ argument, this court must first determine that a reasonable fact-finder could conclude that the supplement to which the plaintiffs refer is a summary of Lynda’s plan of insurance. No reasonable fact-finder could so conclude. The supplement is clearly only a general description of the Federal Employees Health Benefits Program. Indeed, the pamphlet does not refer to any particular plan of insurance under the Program. Instead, it only contains general information about the rights and obligations of federal employees under the FEHBA as a whole. Plaintiff’s Response to

to infer the existence of coverage based on the absence of notice from [the defendants] that the change in family circumstance, of which the agency had no notice, caused the Plaintiffs’ eligibility for federal health benefits to cease.” See Defendants’ Brief in Support of Motion for Summary Judgment, p. 9.

Motion for Summary Judgment, unnumbered exhibit no. 3 ("FPM Supplement 890-1"), p. 2 ("This pamphlet contains information about your rights and obligations under the Program and describes its major features."). Under the FEHBA, federal employees may choose one of any number of insurance plans provided by one of any number of insurance providers. See 5 U.S.C. §§ 8902-03. The supplement does not purport to summarize any one plan by any one provider.

In any event, the supplement supports the defendants' position. The supplement clearly states that "Family Members Eligible for Coverage" include an enrollee's "unmarried dependent stepchildren under age 22 *if they live with you in a regular parent-child relationship*". Plaintiff's Response to Motion for Summary Judgment, unnumbered exhibit no. 3 ("FPM Supplement 890-1"), p. 5 (emphasis added). The plaintiffs argue that the supplement also contains a list of events causing termination of coverage and that ceasing to live with the enrollee is not one of the events on the list. However, in making this argument the plaintiffs ignore the title of the list itself: "Events Causing *Family Members* to Lose Eligibility for Coverage." See id. (emphasis added). By specifically referring to "family members," the list clearly excludes stepchildren not living with enrollees. Accordingly, this court is not persuaded by the plaintiffs' argument.

IV. Conclusion

No reasonable fact-finder could conclude that Lynda C. Dugger's health insurance plan covered her stepchild Jeb after Jeb moved out of her home. There is no genuine issue as to any material fact regarding this matter, and the defendants are entitled to a judgment as a matter of law.

A separate order in accordance with this opinion shall issue this day.

This the ____ day of May 1998.

United States District Judge

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ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, the court finds all of the defendants' motions for summary judgment well-taken and shall grant them

THEREFORE, it is hereby ORDERED that:

- (1) the defendants' motions for summary judgment are GRANTED; on the docket, these motions are entry numbers 19, 27, 33, 34, and 36;
- (2) all of the plaintiffs' claims are DISMISSED; and
- (3) this case is CLOSED.

All memoranda, affidavits and other materials considered by the court in ruling on this motion are hereby incorporated into and made a part of the record in this cause.

SO ORDERED, this the ____ day of May 1998.

United States District Judge